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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

) Case No.
SIDNEY NAIMAN and ABANTE)
ROOTER AND PLUMBING INC.,) <u>CLASS ACTION</u>
individually and on behalf of all others)
similarly situated,) COMPLAINT FOR VIOLATIONS
) OF:
Plaintiffs,)
)
vs.)
)
MILLENNIAL SOLUTIONS, LLC)
d/b/a GLOBAL BUSINESS)
LENDING, and DOES 1 through 10,)
inclusive, and each of them,)
)
Defendant.) <u>DEMAND FOR JURY TRIAL</u>
)
)
)
)
)
)

Plaintiffs SIDNEY NAIMAN and ABANTE ROOTER AND PLUMBING
INC. ("Plaintiffs"), individually and on behalf of all others similarly situated, allege

the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiffs bring this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of MILLENNIAL SOLUTIONS LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiffs on Plaintiffs’ cellular telephones in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations thereby invading Plaintiffs’ privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs, residents of California, seek relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a Florida limited liability company. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does business within the State of California and Plaintiffs reside within the Counties of Butte and Alameda.

PARTIES

4. Plaintiff, SIDNEY NAIMAN (“Naiman”), is a natural person residing in Butte County, California and is a “person” as defined by 47 U.S.C. § 153 (39).

5. Plaintiff, ABANTE ROOTER AND PLUMBING INC. (“Abante”), resides in Alameda County, California and is a “person” as defined by 47 U.S.C. § 153 (39).

6. Defendant, MILLENNIAL SOLUTIONS, LLC (“Defendant”) is a company, and is a “person” as defined by 47 U.S.C. § 153 (39).

7. The above-named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

8. Plaintiffs are informed and believe that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiffs are informed and believe that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

9. Beginning in or around October 2018, Defendant contacted Naiman on his telephone number ending in -5502, in an attempt to solicit him to purchase Defendant's services.

10. Beginning in or around April 2017, Defendant contacted Abante on its telephone number ending in -6147, in an attempt to solicit her to purchase Defendant's services.

11. Defendant used an “automatic telephone dialing system” as defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiffs seeking to solicit its services.

12. Defendant contacted or attempted to contact Plaintiffs from telephone numbers (561) 366-2285 and (954) 251-0071 confirmed to be Defendant's

1 numbers.

2 13. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 14. During all relevant times, Defendant did not possess Plaintiffs' "prior
5 express consent" to receive calls using an automatic telephone dialing system or an
6 artificial or prerecorded voice on their cellular telephones pursuant to 47 U.S.C. §
7 227(b)(1)(A).

8 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
9 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

10 **CLASS ALLEGATIONS**

11 16. Plaintiffs bring this action individually and on behalf of all others
12 similarly situated, as members of the proposed class concerning the ATDS claim
13 for no prior express consent (hereafter "The Class") is defined as follows:

14 All persons within the United States who received any
15 solicitation/telemarketing telephone calls from
16 Defendant to said person's cellular telephone made
17 through the use of any automatic telephone dialing
18 system or an artificial or prerecorded voice and such
19 person had not previously consented to receiving such
20 calls within four years prior to the filing of this complaint
through to the date of class certification.

21 17. Plaintiffs represent, and are members of, The Class, consisting of all
22 persons within the United States who received any collection telephone calls from
23 Defendant to said person's cellular telephone made through the use of any
24 automatic telephone dialing system or an artificial or prerecorded voice and such
25 person had not previously not provided their cellular telephone number to
26 Defendant within four years prior to the filing of the complaint, through the date of
27 class certification.

28 18. Defendant, its employees and agents are excluded from The Class.

1 Plaintiffs do not know the number of members in The Class, but believe the Class
2 members number in the thousands, if not more. Thus, this matter should be
3 certified as a Class Action to assist in the expeditious litigation of the matter.

4 19. The Class is so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Class
6 members are unknown to Plaintiffs at this time and can only be ascertained through
7 appropriate discovery, Plaintiffs are informed and believe and thereon allege that
8 The Class includes thousands of members. Plaintiffs allege that The Class
9 members may be ascertained by the records maintained by Defendant.

10 20. Plaintiffs and members of The Class were harmed by the acts of
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs
12 and Class members via their telephones thereby causing Plaintiffs and Class
13 members to incur certain charges or reduced telephone time for which Plaintiffs
14 and Class members had previously paid by having to retrieve or administer
15 messages left by Defendant during those illegal calls, and invading the privacy of
16 said Plaintiffs and Class members.

17 21. Common questions of fact and law exist as to all members of The
18 Class which predominate over any questions affecting only individual members of
19 The Class. These common legal and factual questions, which do not vary between
20 Class members, and which may be determined without reference to the individual
21 circumstances of any Class members, include, but are not limited to, the following:

- 22 a. Whether, within four years prior to the filing of this complaint
23 through the date of class certification, Defendant made any
24 telemarketing/solicitation call (other than a call made for
25 emergency purposes or made with the prior express consent of
26 the called party) to a Class member using any automatic
27 telephone dialing system or any artificial or prerecorded voice
28 to any telephone number assigned to a cellular telephone

1 service;

2 b. Whether Plaintiffs and the Class members were damaged
3 thereby, and the extent of damages for such violation; and

4 c. Whether Defendant should be enjoined from engaging in such
5 conduct in the future.

6 22. As persons that received numerous telemarketing/solicitation calls
7 from Defendant using an automatic telephone dialing system or an artificial or
8 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting
9 claims that are typical of The Class.

10 23. Plaintiffs will fairly and adequately protect the interests of the
11 members of The Class. Plaintiffs have retained attorneys experienced in the
12 prosecution of class actions.

13 24. A class action is superior to other available methods of fair and
14 efficient adjudication of this controversy, since individual litigation of the claims
15 of all Class members is impracticable. Even if every Class member could afford
16 individual litigation, the court system could not. It would be unduly burdensome
17 to the courts in which individual litigation of numerous issues would proceed.
18 Individualized litigation would also present the potential for varying, inconsistent,
19 or contradictory judgments and would magnify the delay and expense to all parties
20 and to the court system resulting from multiple trials of the same complex factual
21 issues. By contrast, the conduct of this action as a class action presents fewer
22 management difficulties, conserves the resources of the parties and of the court
23 system, and protects the rights of each Class member.

24 25. The prosecution of separate actions by individual Class members
25 would create a risk of adjudications with respect to them that would, as a practical
26 matter, be dispositive of the interests of the other Class members not parties to such
27 adjudications or that would substantially impair or impede the ability of such non-
28 party Class members to protect their interests.

26. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the Class

27. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above.

28. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

29. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiffs and the Class Members are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

30. Plaintiffs and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the Class

31. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above.

32. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
2 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

3 33. As a result of Defendant's knowing and/or willful violations of *47*
4 *U.S.C. § 227(b)*, Plaintiffs and the ATDS Class members are entitled to an award
5 of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
6 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

7 34. Plaintiffs and the Class members are also entitled to and seek
8 injunctive relief prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs request judgment against Defendant for the following:

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227(b)**

- 14 • As a result of Defendant's negligent violations of *47 U.S.C.*
15 *§227(b)(1)*, Plaintiffs and the ATDS Class members are entitled to
16 and request \$500 in statutory damages, for each and every violation,
17 pursuant to *47 U.S.C. 227(b)(3)(B)*.
18 • Any and all other relief that the Court deems just and proper.

19 **SECOND CAUSE OF ACTION**

20 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

21 **Act**

22 **47 U.S.C. §227(b)**

- 23 • As a result of Defendant's willful and/or knowing violations of *47*
24 *U.S.C. §227(b)(1)*, Plaintiffs and the ATDS Class members are
25 entitled to and request treble damages, as provided by statute, up to
26 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
27 *§227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
28 • Any and all other relief that the Court deems just and proper.

1 35. Pursuant to the Seventh Amendment to the Constitution of the United
2 States of America, Plaintiffs are entitled to, and demand, a trial by jury.

3 Respectfully Submitted this 25th Day of September, 2020.

4 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

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6 By: /s/ Todd M. Friedman
7 Todd M. Friedman
8 Law Offices of Todd M. Friedman
9 Attorney for Plaintiffs
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